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FINANCING OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991

Budget estimates for 1998

Conditions of service for the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

Report of the Advisory Committee on Administrative and Budgetary Questions

I. INTRODUCTION

1. The Advisory Committee on Administrative and Budgetary Questions has considered an advance draft of the report of the Secretary-General on financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 for the period 1 January-31 December 1998.[1] In addition, the Committee considered the report of the Secretary-General on the conditions of service for the judges of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (A/52/520). During its consideration of the reports, the Committee met with the Prosecutor and the Registrar of the International Tribunal for the Former Yugoslavia and with representatives of the Secretary-General, who provided additional information.

2. The Advisory Committee welcomes the budget presentation of the requirements of the International Tribunal for 1998 and the efforts made by the Secretary-General to address previous recommendations of the Committee (see A/51/7/Add.7 and Corr.1-2). The Committee notes that, as recommended, all personnel and administrative support cost requirements of each organizational unit of the International Tribunal have been fully budgeted. The Committee notes that

annex IV to the report of the Secretary-General contains the rationale for the proposed new posts for each organizational unit of the Tribunal. The Committee also notes that, whenever possible, performance indicators of various units have been presented in a tabular format, accompanied by analyses in support of the requests, as requested by the Committee.

3. The Advisory Committee notes that financial data for the period preceding that of the new budget has been incorporated in the report, including expenditure data for 1996 and appropriations for 1997, as requested by the Committee (A/51/7/Add.7 and Corr.1-2, para. 9). Furthermore, with regard to expenditures for 1997, the Committee was provided with a detailed forecast of expenditures for 1997. Accordingly, projected expenditures would amount to $38,339,645 for 1997 against a net appropriation of $48,587,000, approved by the General Assembly in its resolutions 51/214 A of 18 December 1996 and 51/214 B of 13 June 1997 for the period 1 January-31 December 1997, reflecting a projected unspent balance of $10,247,355 as at 31 December 1997.

II. FINANCIAL REQUIREMENTS FOR 1998

4. As indicated in paragraph 8 and table 2 of the report of the Secretary-General, the overall level of resources proposed for 1998 amount to $71,094,700 gross ($64,216,200 net of staff assessment and rental income).

5. The proposed staffing table for 1998 comprises 571 assessed budget posts (excluding 11 judges), reflecting an increase of 204 posts (152 new temporary posts and the conversion of 52 gratis personnel to temporary posts) and the reclassification of 12 posts.[2] The estimates include the phased conversion of 52 existing gratis personnel, as at 3 April 1997, whose responsibilities were identified to be essential to the operations of the International Tribunal; in this regard, it is indicated that all remaining agreements with donor Governments and organizations for the use of gratis personnel will be allowed to lapse in 1998.[3] Plans for phasing out gratis personnel in respect of the International Tribunal's operations are proposed pursuant to previous recommendations of the Advisory Committee and in accordance with the provisions of General Assembly resolution 51/243 of 15 September 1997. As requested by the Advisory Committee, details of requests and justifications for new posts is provided in annex IV to the budget report. Taking into account the adjustments mentioned in paragraphs 6 to 8 below, the Advisory Committee recommends acceptance of the new posts requested by the Secretary-General, including the posts to be established as a consequence of the phase out of gratis personnel.

6. As indicated in table 2 of the report of the Secretary-General, the cost estimates for 1998 of 571 posts amount to $38,510,800 gross (or $32,070,800 net of staff assessment). The budgetary assumptions for the continuing temporary posts include vacancy rates for 1998 of 5 per cent for the Professional posts and 2.5 per cent for the General Service posts. With regard to the 1998 estimates for the 204 new posts, the provisions for 152 new temporary posts were calculated on the basis of a vacancy rate of 50 per cent for Professional posts and 35 per cent for General Service posts. The estimates for the 52 gratis positions proposed for conversion to temporary posts were calculated on the basis of a vacancy factor of 75 per cent, or 25 per cent of the full annual

costs, reflecting the intention to phase out gratis personnel arrangements and recruit staff during the course of 1998.[4]

7. Upon request, the Advisory Committee was informed that, as at 31 October 1997, there were 31 vacant positions (24 in the Office of the Prosecutor and 7 in the Registry) against 367 authorized posts in the assessed budget (see annex I to the present report). Taking into account the prior experience of the International Tribunal in filling posts (see, for example, A/51/7/Add.7 and Corr.1-2, para. 13), the Committee believes that it will be very difficult for the International Tribunal to fill all new posts in 1998 and that, consequently, the stated assumptions for occupancy of new posts in 1998 should be adjusted.

8. In this connection, the Advisory Committee was informed that, if the turnover rates for Professional and General Service posts were revised from 5 per cent and 2.5 per cent, respectively, to 8 per cent and 5 per cent, respectively, the requirements for 1998 would be reduced by $881,700 gross ($730,000 net of staff assessment). Moreover, with respect to the new posts, if the provisions for 152 new temporary posts were calculated on the basis of a delayed recruitment factor of 60 per cent for the Professional posts and 50 per cent for the General Service posts, the requirements for 1998 would be reduced by $1,368,600 gross ($1,140,000 net of staff assessment). Consequently, on the basis of the revised assumptions, after deducting $2,250,300 gross ($1,870,000 net of staff assessment), the estimate for posts in 1998 would amount to $36,260,500 gross ($30,200,800 net of staff assessment) and the total estimate for 1998 would amount to $68,844,400 gross, or $62,346,200 net of staff assessment and rental income.

Chambers (including conditions of service of the judges)

9. As shown in table 5 of the report of the Secretary-General on financing of the Tribunal,[1] the resource requirements for the Chambers for 1998 amount to $3,137,800 (net of staff assessment), as compared to $2,349,100 (net of staff assessment) for 1997. This includes the requirements of: (a) $328,800 which provides for the continuation of six General Service (Other level) staff and which reflects a resource growth of $18,900, representing the net effect of the establishment of two new General Service posts;[5] and (b) $2,347,900 for the salaries and allowances of the 11 judges of the Tribunal, the salaries and allowances being calculated in accordance with the proposals concerning conditions of service for the judges of the International Tribunal for the Former Yugoslavia (see A/52/520). With respect to the provision of $73,100 for the pensions of five judges,[6] the Advisory Committee was provided with a detailed breakdown of the proposed provision and the list of judges who are retiring (see annex II to the present report).

10. The Advisory Committee recalls that, as provided for in article 13, paragraph 4, of the Statute of the International Tribunal,[7] "The Judges shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Court of Justice. They shall be eligible for re-election." The conditions of service of the judges of the International Tribunal for the Former Yugoslavia are discussed in paragraphs 3 to 14 of document A/52/520. As indicated in paragraph 14 of that document, the

General Assembly, in resolution 49/242 B of 20 July 1995, endorsed the recommendations of the Advisory Committee vis-à-vis the emoluments and other conditions of service for the judges of the Tribunal.[8] With regard to pension entitlements and survivors' benefits, the Committee recalls that it had recommended that there was no need for the General Assembly to pronounce itself on these issues in respect of the Tribunal, since those matters could be determined by the Assembly in the light of what would be decided with respect to the International Court of Justice (ICJ).

11. In its resolution 50/216 of 23 December 1995, the General Assembly requested the Secretary-General to address the issues raised by the Advisory Committee concerning the conditions of service of members of ICJ,[9] in the context of the next review, at the fifty-third session of the General Assembly. In this connection, with regard to the pension entitlements and survivors' benefits for the judges of the International Tribunal, the Advisory Committee is of the view that, if a comprehensive review of emoluments and of the pension scheme of members of the International Court of Justice were submitted by the Secretary-General to the General Assembly at its fifty-third session in accordance with Assembly resolution 50/216, the review of the pension scheme of the judges of the International Tribunal should be postponed until that report is taken up by the Committee in 1998 and that, pending that review, the estimate of $113,300 ($73,100 for pensions and $40,200 for survivors' benefits) should be considered as provisional. In 1998, the Advisory Committee will also examine a number of related issues, including the possibility of a judge serving subsequent terms on more than one body.

12. In paragraph 38 of the report of the Secretary-General,[1] a provision of $57,000 is requested to cover the services of five amici curiae in 1998. In this connection, the Advisory Committee was provided with a copy of the guidelines concerning the submission of amicus curiae briefs (see A/52/375, paras. 50-52, for persons or organizations that filed motions or were granted leave to file amicus curiae briefs in 1997).

13. In paragraph 39 of the report of the Secretary-General,[1] a provision of $39,600 "would provide for the travel of the President, accompanied by a Legal Officer, to the former Yugoslavia for high-level contacts and to visit Central and Western European States to address senior government officials as well as to request support for the Tribunal including financial assistance in terms of voluntary contributions". The Advisory Committee notes that in 1997 provisions were approved in the amount $13,200 and that, as at September 1997, travel expenditure amounted to $6,288. The Committee believes that the provision of $39,600 estimated for 1998[10] is in excess of actual requirements. Under the circumstances, the Advisory Committee recommends that the estimate be reduced by $14,600 to $25,000.

Office of the Prosecutor

14. The 1998 resource requirements of the Office of the Prosecutor amount to $19,133,300 (net of staff assessment), reflecting an increase of $2,343,200 over the 1997 appropriation of $16,790,100 (net of staff assessment). In addition, for 1998, it is estimated that $3,631,000 will be utilized from extrabudgetary resources. For the Office of the Prosecutor, the Secretary-General requests 278

posts (183 Professional and 95 General Service), including the addition of 105 posts (77 new temporary posts and 28 gratis personnel positions which are proposed for conversion to temporary posts) and three reclassifications.[11]

15. As regards the activities of the Office of the Prosecutor, recent developments are highlighted in paragraphs 11 to 17 of the report of the Secretary-General on financing of the Tribunal.[1] In paragraphs 13 and 15 of that report, it is indicated that, owing to the arrest of additional indicted accused (20 persons are currently in custody in The Hague), staff resources in the investigations area have to be diverted to the prosecution activities to provide the requisite capabilities in support of the prosecution mandate. Consequently, only 3 investigations are currently being fully pursued, 7 are under partial investigation and 12 have been suspended temporarily until further resources are obtained. The Prosecutor anticipates that it will be necessary to undertake at least another 60 investigations before she can advise the Security Council that the International Tribunal's investigation mandate has been completed.

16. The Advisory Committee notes from paragraphs 42 to 49 of the report of the Secretary-General that the Office of the Prosecutor has been reorganized during the latter half of 1997 in the light of the increasing court activity and the substantial shift of investigative resources from investigations to the prosecution phase of the Tribunal's activities. The Office is now organized in four main units, namely, the Immediate Office of the Prosecutor, the Prosecution Section, the Investigation Section and the Information and Evidence Section. The Committee was provided with a draft organizational manual of the International Tribunal, describing the functions and responsibilities of those units and detailed organizational charts of the units, with the corresponding staff resources. In this connection, the Committee notes that its previous recommendations (A/51/7/Add.7 and Corr.1-2, paras. 21 and 25-26) have been followed.

17. The Advisory Committee notes from paragraphs 39 to 42 of annex IV to the report of the Secretary-General that staffing proposals for and total cost of field offices for 1998 have been identified in accordance with the Committee's previous recommendation (A/51/7/Add.7, para.30).

Registry

18. As shown in table 9 of the report of the Secretary-General,[1] the 1998 resource requirements for the Registry amount to $41,945,200 (net of staff assessment and rental income), reflecting an increase of $12,497,400 over the 1997 appropriation of $29,447,800 (net of staff assessment and rental income). In addition, for 1998, it is estimated that $480,000 will be administered by the Registry as extrabudgetary resources.[12] For the Registry, the Secretary-General requests 292 posts (120 Professional, 101 General Service and 71 Security Service personnel), of which 188 are continuing temporary posts, 73 new temporary posts, 24 gratis personnel positions which are proposed for conversion to temporary posts, and 7 extrabudgetary staff. Nine posts are proposed for reclassification. As indicated in table 6 and paragraph 66 of annex IV of the report of the Secretary-General, of the 24 gratis personnel positions proposed for conversion, 11 positions are to be assigned to the newly established

Chambers Legal Support Unit of the Registry. The Committee was provided with detailed organizational charts of the Registry's units, reflecting all proposed staff positions.

19. The Advisory Committee notes from paragraph 19 and annex I, paragraph 21, of the report of the Secretary-General[1] that it is anticipated that an interim courtroom will be completed by early 1998 and that this facility will be funded by voluntary contributions; however, it is indicated that it would not be able to handle joint trials and would not be suited to lengthy public trials.

20. As indicated in paragraph 76 of the report of the Secretary-General,[1] a provision of $2,950,600 is requested for the construction of the second permanent courtroom, since it is anticipated that primary and appellate cases will be conducted simultaneously. Upon request, the Advisory Committee was provided with a detailed justification in support of this request (see annex III to the present report). For the reasons provided in the annex, the Advisory Committee has no objection to the construction of the second courtroom. The Advisory Committee understands that discussions are now under way with regard to the provision of voluntary contributions for the second courtroom. The Committee expects to be kept informed of this, and expects that any income will be reflected in the relevant performance report.

III. CONCLUSIONS

21. On the basis of the comments and observations in paragraphs 7, 8 and 13 above, the Advisory Committee recommends that the General Assembly appropriate for the Special Account for the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 the amount of $68,829,800 gross ($62,331,600 net of staff assessment of $6,059,700 and rental income of $438,500) for the period 1 January-31 December 1998.

22. As indicated in paragraph 17 of annex I to the report of the Secretary-General,[1] with regard to witness protection, the Tribunal has entered into numerous discussions with a number of Member States regarding the willingness to assist with funding and relocation of protected witnesses. The Advisory Committee requests that, in the context of the next budget presentation, the Secretary-General report on these matters. Similarly, information should be provided on the steps being taken with regard to long-term arrangements for incarceration.

Notes

[1] A/C.5/52/4.

[2] Ibid., para. 9 and table 3.

[3] Ibid., para. 7.

[4] Ibid., annex II, para. 28.

[5] Ibid., para. 35.

[6] Ibid., para. 37 (d).

[7] S/25704 and Corr.1, annex.

[8] Official Records of the General Assembly, Forty-ninth Session, Supplement No. 7 and corrigendum (A/49/7 and Add.1-14), document A/49/7/Add.12.

[9] Ibid., Fiftieth Session, Supplement No. 7A (A/50/7/[Addenda]), document A/50/7/Add.11, para. 14.

[10] A/C.5/52/4, table 5.

[11] Ibid., tables 7 and 8.

[12] Ibid., tables 9 and 10.

Annex I

STATISTICS FOR POSTS IN THE INTERNATIONAL TRIBUNAL FOR THE FORMER YUGOSLAVIA BY DIVISION, SERVICE AND SECTION, AS AT 31 OCTOBER 1997

Section	Authorized	Vacant	Vacancy rate (percentage)
Judges Chambers	6		0.0
Subtotal	6		0.0
Office of the Prosecutor			
Office of the Chief	9	1	11.0
Prosecution	13	3	23.0
Investigations	111	17	15.0
Exhumations project	5		0.0
Legal advisory	6	1	17.0
Information and evidence	29	2	7.0
Subtotal for Division	173	24	14.0
Registry/Service: Registrar			
Office of the Registrar	2		0.0
Security	64		0.0
Press and information	4		0.0
Legal support	5		0.0
Subtotal	75		0.0
Registry/Administrative Services			
Office of the Chief	2		0.0
Personnel services	3		0.0
Budget and finance	6		0.0
General services	20	1	5.0
Electronic support and communications	24	4	17.0
Library and reference	2		0.0
Conference and language services	41	1	2.0
Subtotal	98	6	6.0
Registry/Service: Judicial Support Services			
Office of the Registrar	2		0.0
Defence Counsel	1	1	100.0
Detention facilities	1		0.0
Protection of victims and witnesses	5		0.0
Court management and support services	6		0.0
Subtotal for services	15	1	7.0
Subtotal for Division	188	7	4.0
Total	367	31	8.0

Annex II

CALCULATION OF PENSIONS OF JUDGES[a]

Number of judges	Period served	Pension due per annum (United States dollars)	Months in 1998	Pension in 1998 (United States dollars)	1998 total pension
2 (Judges Li and Stephen)	4 years each	22 000	12	22 000	44 000
1 (Judge Deschênes)	3 years, 5 months	18 800	12	18 800	18 800
3 (Judges Karibi-Whyte, Odio-Benito, Jan)	5 years	27 500	1.5	3 440	10 300
Total					73 100

[a] Judges of the International Tribunal for the Former Yugoslavia as at 17 November 1997:

(a) Newly elected (*) and re-elected judges (indicating current presiding judges):

President Antonio CASSESE (Italy), President
Judge Claude JORDA (France), Presiding Judge
Judge Gabrielle Kirk MCDONALD (United States of America), Presiding Judge
Judge Lal Chand VOHRAH (Malaysia)
Judge Fouad Abdel-Moneim RIAD (Egypt)
*Judge Mohamed SHAHABUDDEEN (Guyana)
*Judge Tieya WANG (China)
*Judge Rafael NIETO NAVIA (Colombia)
*Judge Richard George MAY (United Kingdom of Great Britain and Northern Ireland)
*Judge Florence Ndepele Mwachande MUMBA (Zambia)
*Judge Almiro Simoes RODRIGUES (Portugal)

(b) Judges whose terms of office have been extended for the duration of the Celebici Trial:

Judge Adolphus KARIBI-WHYTE (Nigeria), Vice-President
Judge Elizabeth ODIO-BENITO (Costa Rica)
Judge Saad Saood JAN (Pakistan)

(c) Judges who are retiring:

Judge Haopei LI (China)
Judge Sir Ninian STEPHEN (Australia)
Judge Jules DESCHÊNES (Canada) (retired from office effective 1 May 1997).

Annex III

TOTAL COSTS RELATED TO THE SECOND COURTROOM

Justification

The Tribunal currently has one courtroom, completed in 1995, which is used for all court activities, including trials and appeals. It is in use every day, with two trials being conducted simultaneously, and each trial sitting for two weeks and then recessing for another two while the other trial sits. One of the primary obligations of the Tribunal is to provide for trial without undue delay, as mandated by article 21 of the Statute adopted by the Security Council in May 1993.[a] The Tribunal must provide adequate facilities to meet that obligation.

A request for funds amounting to $3,357,000 for the construction of a second courtroom was initially included in the 1997 budget proposal but subsequently withdrawn. The reason for withdrawal was that, at that time (February 1997), one trial had been completed, only two trials were ready or expected to proceed throughout 1997, and no additional accused had been surrendered to the Tribunal. Furthermore, the Office of Internal Oversight Services had recommended that the Tribunal assess the cost of construction "against other less expensive alternatives". Consequently the Tribunal modified its request in the 1997 budget to cover only the initial planning and design of a second courtroom, in order to be able to commence construction in a timely fashion if circumstances changed.

Circumstances at the Tribunal have changed considerably since that decision was made six months ago. Three additional accused have been surrendered to the Tribunal, all of whom are charged under separate indictments in respect of unrelated incidents and therefore will be tried separately. A fourth accused has recently been arrested and is expected to be surrendered to the Tribunal before the end of 1997. There are more than 60 known accused who could be arrested and surrendered to the Tribunal at any time, together with an unknown number who may be the subject of sealed indictments.

In the meantime, two trials are being conducted simultaneously in one courtroom, sitting for two weeks and then recessing for another two. This effectively doubles the length of time for each trial, with all its associated expenditure, such as defence counsel costs. Related travel costs have been increased significantly as both counsel and witnesses now return to their country of residence at the end of each two-week period and have to be brought back again two weeks later.

It is anticipated that hearings in one of the two trials now being conducted will be completed by the end of the first quarter of 1998 and in the other by the end of the second quarter. Of the three accused surrendered to the Tribunal in the past few months, it is expected that all three will be ready for trial by the end of 1997 and that their trials will therefore have to be delayed until courtroom time becomes available. This lays the Tribunal, and thus the

United Nations, open to charges of undue delay in trial proceedings, thus breaching the statutory mandate issued by the Security Council.

Arrangements are in hand for the construction of an interim courtroom funded by a donation from the Government of the United Kingdom of Great Britain and Northern Ireland. However, owing to a combination of lack of space and restricted funds, this will be an interim facility, not suited to lengthy public trials. There will be no public gallery and the courtroom cannot handle joint trials. Of particular concern is the fact that current funding does not allow for the same degree of witness protection as that afforded by the main courtroom. Adjacent facilities for witnesses and other court participants are cramped or non-existent.

Owing to the complexity of the issues at hand and the severity of the charges against persons accused before the Tribunal, trials are protracted affairs and the three trials due to start in 1998 can be expected to fill the court calendar for that year, even utilizing the interim courtroom. It is also expected that the increased trend in the numbers of accused surrendering will continue so that there will be matters awaiting trial well into 1999 and beyond.

In addition, trials are frequently being interrupted to allow both the Appeals Chamber and the two Trial Chambers to handle other matters. These interruptions often entail additional costs for witness or counsel accommodation and/or travel. Preliminary motions in the three cases awaiting trial can be expected to require approximately 20 court days each. The first full appeal against conviction has only just been lodged and will require a number of interruptions to the current trial schedule.

The Tribunal has investigated other alternatives, including the use of other court facilities in The Hague. The unique combination of maximum security requirements, the need for adequate publicity and media access for Tribunal proceedings and the sheer length of the trials renders this option impracticable. No other facilities are available to the Tribunal. The Tribunal has also considered lengthening the hours during which the court is used and has analysed whether trials could be speeded up by the use of extended hours within the one courtroom. However, this option results in no significant savings in staff resources and has an adverse effect on all matters involving external support, such as the provision of transport for the accused and security outside the Tribunal premises, all of which is provided by the host country. As a result of its survey of extended hours, the Tribunal has determined that this is not a viable alternative to the construction of a second courtroom, given the increased number of accused now awaiting trial.

Provision is therefore being made in the 1998 budget to complete the construction of a permanent second courtroom with facilities equivalent to those in the existing courtroom, particularly those relating to security and witness protection. Even if this work were commenced in the first quarter of 1998, actual construction would take 9 to 12 months; a second courtroom would therefore not be available for use before the final quarter of 1998, if then.

The interim courtroom will be maintained even after the second courtroom facility is constructed. It will enable the Appeals Chamber to hear matters

without interrupting trials in the two main courtrooms. It will be used mainly for closed session matters, particularly in the pre-trial phase, for which it is particularly well-suited owing to its smaller size and the lack of a public gallery and facilities.

Notes

[a] S/25704 and Corr.1, annex.